

Entergy engaged USS on an hourly basis, which is significantly different from standard industry practice for large projects of this kind. USS has no limitations on the amount of time and money it can bill to Complainants on a per pole or per circuit basis.

Furthermore, Entergy's comparisons of USS rates with other firms' rates are deceptive. Typically, parties negotiate a per pole deal for the type of survey and inspection work for which Entergy contracted with USS. The higher hourly rates Entergy cites usually apply to additional services outside the scope of the contract. 276/ In other words, the other firms' hourly rates are irrelevant because Complainants would never contract survey and inspection services on an hourly basis. In addition, just as Entergy claims it was able to negotiate a lower rate with USS, it is likely that, given a project of this magnitude, the alternative providers would likely have reduced their rates as well. Regardless, any "swing" that may be "gained" through a lower unit rate are obviously lost through other inefficiencies such as repeat visits, travel time and other non-productive time for which USS bills Complainants time.

More important, the services other contractors like UCI provide are by far more comprehensive—and useful. According to USS, the scope of its engagement is to identify poles with violations with the goal of getting the cable operator out to the pole to assess and make corrections. 277/ USS has made very clear that it is not

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276/ *Id.*

277/ Billingsley Reply Decl., ¶ 61; Hooks Reply Decl., ¶ 21; Gould Reply Decl., ¶ 20; Dial Reply Decl., ¶ 17.

charged with finding all violations on the poles. For example, Exhibit 4 is a copy of a Comcast Violation Report that specifically states “This report does not attempt to represent every existing violation or descripcency [sic]. It is the responsibility of the Licensee to correct all existing violations at the time of correction while not creating any new violation or descripcency [sic].” It is unreasonable for Complainants to pay for these services as a condition of access.

Typically, when Complainants hire contractors to do survey and inspection work, the contractors identify all of the problems on the poles and then identify the make-ready that must be completed to clear the pole. However, USS’ only function has been to collect information about the poles and issue a notification when it sees a violation. 278/

Even assuming that Entergy’s and USS’ work were perfect, what this means for the cable operators is that they must hire another contractor to go out to the pole USS flagged as having a violation. The second contractor assesses all potential violations and creates make-ready work orders. UCI charges Comcast a flat per-pole fee to: 1) go to every pole identified as a violation; 2) inspect the pole; 3) identify violations and make-ready; and 4) write a work order Comcast can give directly to a contractor. 279/ In other words, *USS does nothing that the second contractor does not also do.*

This two-contractor process actually increases Complainants’ costs. For example, the second contractor, UCI, charges Comcast \$24 per pole to evaluate

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278/ *Id.*

279/ Billingsley Reply Decl., ¶ 62

violations USS flags. Because UCI is only reviewing the poles USS flags, UCI must jump around to different areas, increasing the per pole costs. If instead, Entergy had hired UCI to conduct the survey, it would have been able to review the poles on a linear basis at \$14 - \$16 per pole. 280/ Ultimately, the only benefits Complainants' derive from Entergy's audit and inspection program are from the services UCI provides. 281/

In light of the limited amount of work USS actually does for the Complainants, (not to mention the fact that Entergy makes a special point of comparing USS to UCI) it is doubtful that USS was uniquely qualified to perform these services. Entergy fails to show how USS is more qualified to perform these limited services than any other contractor. Further, Entergy's claims that communications workers are not qualified to render judgments involving electric facilities are preposterous. Although Entergy goes to great lengths to disparage the training and experience of Complainants' contractors working in and around electric facilities, nearly all of the USS personnel working on this project (and described in the Response) formerly worked for cable television operators, communications contractors or telephone companies. 282/ The logical conclusion

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280/ *Id.* ¶ 63.

281/ Because Entergy is the overwhelming beneficiary of USS' work, and because USS does not do anything that UCI or other second contractor must also do, Complainants do not believe Entergy can properly allocate *any* of USS' charges to Complainants. That said, Complainants offered alternative allocation methodologies in its Complaint in the spirit of compromise. See Complaint, Section IX.G.

282/ See e.g., Response ¶ 141, n. 303, p. 84.

to draw is that Entergy considered USS to be uniquely qualified to perform the mapping and database functions it needs to rehabilitate its plant records.

**XI. COX IS A PROPER PARTY TO THIS SUIT AND IS ENTITLED TO ALL RELIEF REQUESTED IN THE COMPLAINT**

Complainants oppose Entergy's attempt to sever Cox from this Complaint. Although Cox was not technically subject to Entergy's audit and inspection program, it has been victim to substantially similar conduct at the hands of Entergy and USS. Like the rest of the Complainants, Cox found itself involved with USS involuntarily. Entergy's characterization of Cox as a satisfied or willing client of USS is false. The truth is that, all things being equal, would never have hired USS.

In Spring 2004, Cox's Jeff Gould first became aware that USS was working for Cox in Jonesboro, Arkansas. It is somewhat unclear how USS originally came to work for Cox. Cox's contracting procedures require company representatives at the Vice-President level to sign contracts. However, at that time no written contract for services exists. From what Cox can determine, Rod Rigsby, who worked for Cox up until approximately April 2004, contracted with USS as early as April 2003. Mr. Rigsby left Cox to work for USS. 283/

From what Mr. Gould could piece together, USS' Tony Wagoner and Mr. Rigsby had entered into what Mr. Wagoner referred to as a "handshake" deal to perform services for Cox in Jonesboro. In addition, Mr. Rigsby structured the invoicing system in a way that gave the impression to the casual observer that Cox was paying USS as Jonesboro's City Water and Light Department contractor, not

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283/ Gould Reply Decl., ¶ 47

Cox's. The truth was, however, that Cox was paying USS directly. Once Cox unraveled Mr. Wagoner's and Mr. Rigsby's scheme, Mr. Gould became involved in an effort to determine the scope of the work. At that time, Cox would have discontinued its relationship with USS, but for political pressure from the City of Jonesboro and another electric pole owner to keep USS involved in the project.<sup>284/</sup>

In the end, USS significantly increased Cox' projects costs. Before Mr. Rigsby brought USS in, True Vance was performing the work for about \$14 per pole. At some point in April or May 2003 Mr. Rigsby announced that he "re-bid" the project and hired USS. However, no Cox representative has ever been able to find any documentation of a bidding process or any proposal from USS. Cox had budgeted approximately \$600,000 for the original project. After USS was done, Cox paid \$922,000 in engineering costs to USS and an additional \$1.2 million to USS that they claimed went to the power companies, minus a 10% "project management fee" that USS retain. <sup>285/</sup>

Ultimately, Cox was dissatisfied with both the scope and quality of USS' work. However, Cox determined that for political reasons, it would have to continue to pay USS in order to move forward on its construction projects. Since then, all projects USS was working on for Cox have since completed and USS no longer works for Cox.

In sum, Cox has had all of the same problems with Entergy and USS as the other Complainants. In addition, Cox has been forced to hire USS directly to

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<sup>284/</sup> *Id.* ¶ 48.

<sup>285/</sup> Gould Reply Decl., ¶ 49.

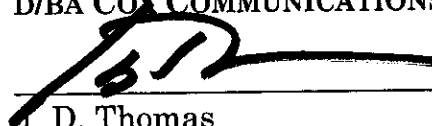
perform services—at a premium cost—that provided no benefit. Although Cox' experience was slightly different from Complainants, the net effect is the same. Entergy and USS leveraged their special relationship to force Cox, as well as the other Complainants, to pay exorbitant fees to create a comprehensive mapping and database system.

## **XII. CONCLUSION**

For the foregoing reasons, and for those set forth in the attached materials, Complainants are entitled to all relief requested in the Complaint and this Reply.

Respectfully submitted,

**ARKANSAS CABLE TELECOMMUNICATIONS  
ASSOCIATION; COMCAST OF ARKANSAS, INC.;  
BUFORD COMMUNICATIONS I, L.P. D/B/A  
ALLIANCE COMMUNICATIONS NETWORK;  
WEHCO VIDEO, INC.; TCA CABLE PARTNERS  
D/BA COX COMMUNICATIONS**



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June 10, 2005

*Its Attorneys*

## CERTIFICATE OF SERVICE

I, Regina D. Hogan, hereby certify that on this 10<sup>th</sup> day of June, 2005, I have had hand-delivered, and/or placed in the United States mail, and/or sent via electronic mail, a copy or copies of the foregoing **REPLY**, with sufficient postage (*where necessary*) affixed thereto, upon the following:

### Via Hand Delivery

Marlene H. Dortch (*Orig. & 4 copies*)  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

Best Copy and Printing, Inc.  
Federal Communications Commission  
Room CY-B402  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

### Via U.S. Mail

Federal Energy Regulatory Commission  
888 First Street, NW  
Washington, D.C. 20426

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Erika E. Olsen  
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Washington, D.C. 20005

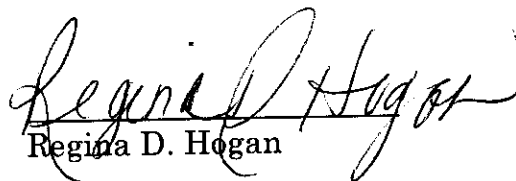
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Regina D. Hogan

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**RECEIVED - FCC**

In the Matter of )  
)  
ARKANSAS CABLE )  
TELECOMMUNICATIONS )  
ASSOCIATION; COMCAST OF )  
ARKANSAS, INC.; BUFORD )  
COMMUNICATIONS I, L.P. d/b/a )  
ALLIANCE COMMUNICATIONS )  
NETWORK; WEHCO VIDEO, INC.; and )  
TCA CABLE PARTNERS d/b/a COX )  
COMMUNICATIONS, )  
)  
*Complainants,* )  
)  
v. )  
)  
ENTERGY ARKANSAS, INC., )  
)  
*Respondent.* )  
\_\_\_\_\_ )

JUN 1 0 2005

Federal Communication Commission  
Bureau / Office

File No. EB-05-MD-004

**RECEIVED**

JUN 1 3 2005

Chief, MDRD  
Enforcement Bureau

**Reply Declaration of Michael T. Harrelson, P.E.**

1. My name is Michael T. Harrelson and I have been asked by the Arkansas Cable Telecommunications Association ("ACTA") to reply to a number of issues contained in the Response and supporting materials of Entergy Arkansas, Inc. ("Entergy" or "EAI") submitted in this proceeding. In the following pages I will address matters raised in the main response as well as the individual declarations of certain Entergy employees and contractors,



including those apparently hired for the purpose of offering declarations in this proceeding.

2. These declarations, together with characterizations in the Response of what EAI's declarants said, create many inaccurate and misleading impressions. Looking closely at and analyzing what each of these witnesses has said—and not said—is very helpful in understanding this dispute and ultimately crafting a resolution to it.

3. The tone and length of Entergy's Response, as well as the content of the supporting declarations shows that this obviously now is a bitter dispute with a serious breakdown in cooperation and effective communication between EAI and ACTA's members. These kinds of disputes occur occasionally, but the vast majority of pole owners and communications companies have figured out systems based on written agreements, good construction standards, the NESC and common-sense practical field solutions to work together. This allows pole owners and attaching parties alike to conduct their business in an efficient, safe and cost-effective manner.

4. Based on my 42 years of experience in working in and around joint use for both electric and communications companies, I believe that there are several critical elements to efficient and successful joint use of poles.

They are:

- The willingness of pole owners and attaching parties alike to work together.

- Sound engineering and construction standards with reasonable provisions for joint use;
- Fair and efficient rules for administering and paying for joint use;
- A thorough understanding and agreement of the parties to rely on and apply the provisions of the National Electrical Safety Code (“NESC”);
- Effective training of electric and communications workers (company employees *and* contractors); and
- The fair and reasonable application of these items to engineering, construction, maintenance, inspection and administration of joint use by all companies.

5. After working in Arkansas on these issues for well over a year, and based on my decades of experience, first as a long-time power company employee and a consulting professional engineer to both electric and communications companies, many if not most of these critical elements are missing from this case. In order for normal operations to resume for cable operators in EAI’s service area, it will be necessary for these conditions to prevail.

6. Entergy’s basic position here is that the cable companies have created the overwhelming majority of the pole problems in Arkansas and that this justifies the harsh terms that it has imposed on cable operators. The harshest term of all is that Entergy has refused for years to allow the complainants in this case to expand their systems using Entergy’s poles.

7. As described in the Complaint and elsewhere, EAI launched a massive inspection program of cable television facilities only, either as a

stand-alone safety audit, or embedded in operators' system upgrade or rebuild processes. In so doing, it has applied strict and harsh interpretations of joint-use contracts, reversing years of field practices, and attempted to collect most of the cost of inspections and the costs of correction of the alleged violations from ACTA members companies Cox, Comcast, Alliance and WEHCO.

8. While undertaking this initiative against Arkansas cable operators, Entergy has ignored the deficiencies in the knowledge and training of its own people and the correction of its facilities. This creates serious problems not only designing and implementing an inspection and correction program, but has caused a sharp rift between the parties that makes reasonable resolution of even the most routine joint-use issues the exception and not the rule.

9. In addition, and as I describe more fully below, EAI is not treating all communications attachers in the same way. For example, the telephone company, SBC and in some areas, Alltel) is not involved at all in EAI's program. Another cable operator that is not a Complainant in this case, has been allowed to complete a very significant new-build project, far more quickly and on far more favorable terms than Entergy has allowed any other operator to do in years. This disparate treatment, and particularly this new build project with this non-complainant operator on the one hand adds to the tensions between Entergy and Complainants. But – at least with respect to

the other cable operator's new-build project – it also shows that EAI is capable of resolving field problems in a reasonable and common-sense manner.

10. Despite the bitterness and the rifts, I have personal knowledge of a number of recent situations where the parties have been able to work out accommodations on individual issues on an amicable and reasonable basis. But again, this unfortunately is not the norm in the current environment.

11. To restore normal operating conditions, a thorough and unflinching understanding of the bases of Entergy's claimed reasons for the inspection and for its position in this litigation is essential. ACTA's Reply refers to these bases as "false premises," a designation which I believe is helpful with which I agree. I will address them in some detail in the following pages. After discussing these issues, I offer several recommendations on how this situation can be improved. These include such important items as establishing (1) effective engineering standards; (2) mutually agreeable terms and conditions, including, possibly a new agreement; and (3) a comprehensive and sustained approach to training, particularly for EAI, which has created some extremely unsafe conditions that, in my opinion, make its hostility toward cable on safety issues ironic and particularly misplaced.

**False Premise Number 1: Cable Operators Are Responsible For Massive Electric Outages Across Arkansas And This Alone Justifies Entergy's Cable Inspection and Clean-Up Program.**

12. The factual proof regarding this first false premise is addressed in the declarations of Bennett Hooks, Marc Billingsley, Jeff Gould and Tony Allen on behalf of ACTA. I have reviewed the materials that both EAI and ACTA's declarants have prepared. It is my independent expert opinion that Arkansas cable operators are not responsible for the widespread outages that Entergy alleges.

13. As the cable-operator declarations show, many of the so-called outages were not outages at all. The overwhelming majority of those events that actually were outages were neither caused by cable, nor had any cable component whatsoever. Some events were power outages that cable operators simply reported to EAI and that EAI's own reports show were caused by such things as lightning, tornadoes and underground power cables whose locations were incorrectly marked in the field and consequently were cut by underground construction crews. In fact, out of a total of 4102 "reports" only 200 involved electric outages. In one case, the hundreds of pages of so-called outage reports included numerous pages listing not only every single transformer on the entire-distribution circuit, but also every customer on that circuit affected by a "blink" which was allegedly caused by cable workers.

14. Equally important, of the outages that Entergy alleged that cable operators caused (although I note that in most cases the Entergy people were careful to use less direct phrases such as “related to” instead of phrases like “caused by”) none has been verified actually to have been caused by cable. Entergy has nothing else to validate the allegations. There were some examples in the materials that EAI submitted that may actually have involved a cable television facility but it could not be determined if the cable facility was a “cause” of the outage. One instance was where a mobile home struck a cable. Where a truck pulling one-half of a double-wide trailer hit a cable, no height was given for the load or the cable or if the cable was too low for the location or if the load was too high. In essentially all cases, cable is simply blamed, but there is no support.

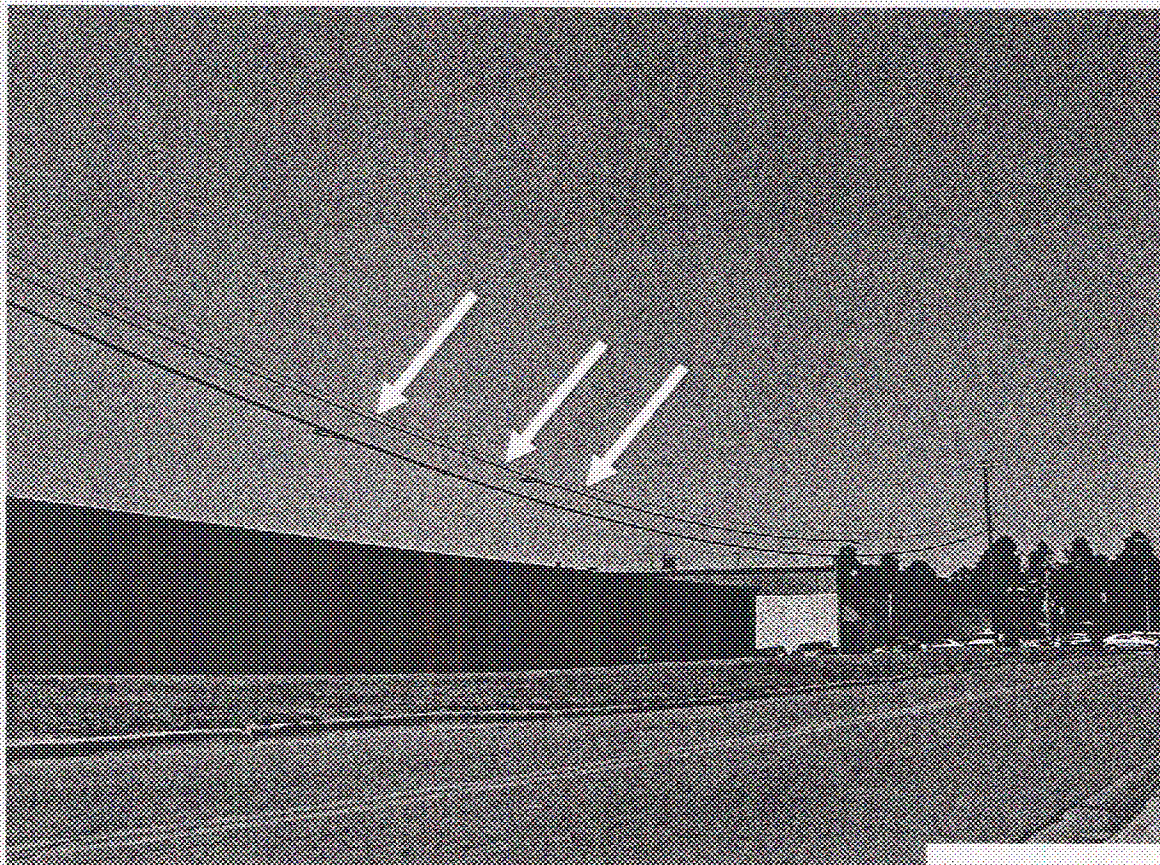
15. Again, based on my review of the materials and my 42 years of experience in aerial plant engineering and construction, cable operators did not cause massive power outages in Arkansas.

**False Premise No. 2: It Is Possible To Resolve Safety And Clearance Issues On Pole Plant By Focusing Exclusively On One Party—Cable Operators.**

16. Over the course of my nearly two-year involvement in this matter in Arkansas, one of the items that has concerned me the most is this notion that a cable operator can assume the burden of plant clean-up alone. This is true from both a logistical standpoint as well as a financial one. Cable operators simply cannot undertake all the actions that would be needed to



clean up the pole plant because they cannot themselves perform such tasks as moving high-voltage electric facilities or replacing poles to provide appropriate clearances. With respect to the costs of such work, it is not reasonable to require cable operators to pay for all these clean-up costs if they did not cause them. The photo below provides a good illustration.



This photo, which I took, shows a very common problem which cannot reasonably be solved without the full cooperation of EAI. Before any other work can be done by any other party, EAI first must correct the impermissibly low sag in its electric lines (Arrows). After that is done, communications cables sags can be adjusted for proper separation from power and proper clearance from ground, if either adjustment is necessary. The proper cable separation for the cable television facilities from power cannot be determined until after power resags. This is an important example of how the pole owner must work with the pole occupants to fix complex safety issues. Location: Little Rock Enmar Dr.



17. Equally important, many of the items that Entergy refers to as “violations” are not violations at all, but plant conditions that EAI has found convenient and economically advantageous to call cable television violations.

18. Many of the true cable violations can only be corrected by EAI or by telephone. A cable operator can physically correct a violation only if power is high enough for the cable operator to move up to correct a low span or at-pole clearance, or if telephone is low enough on the pole to allow the cable operator to move down to correct separations from power on the pole.

19. Additionally, if the cable operator is to move down to get more separation from power, the existing pole must be tall enough to allow CATV to keep adequate ground clearance in the spans.

20. If this is not the case, the cable TV facilities can only be corrected if either the telephone company (which usually is the lowest facility on the pole) can (or will) move its equipment to a lower spot on the pole or if the power company can (or will) move its equipment to a higher spot.

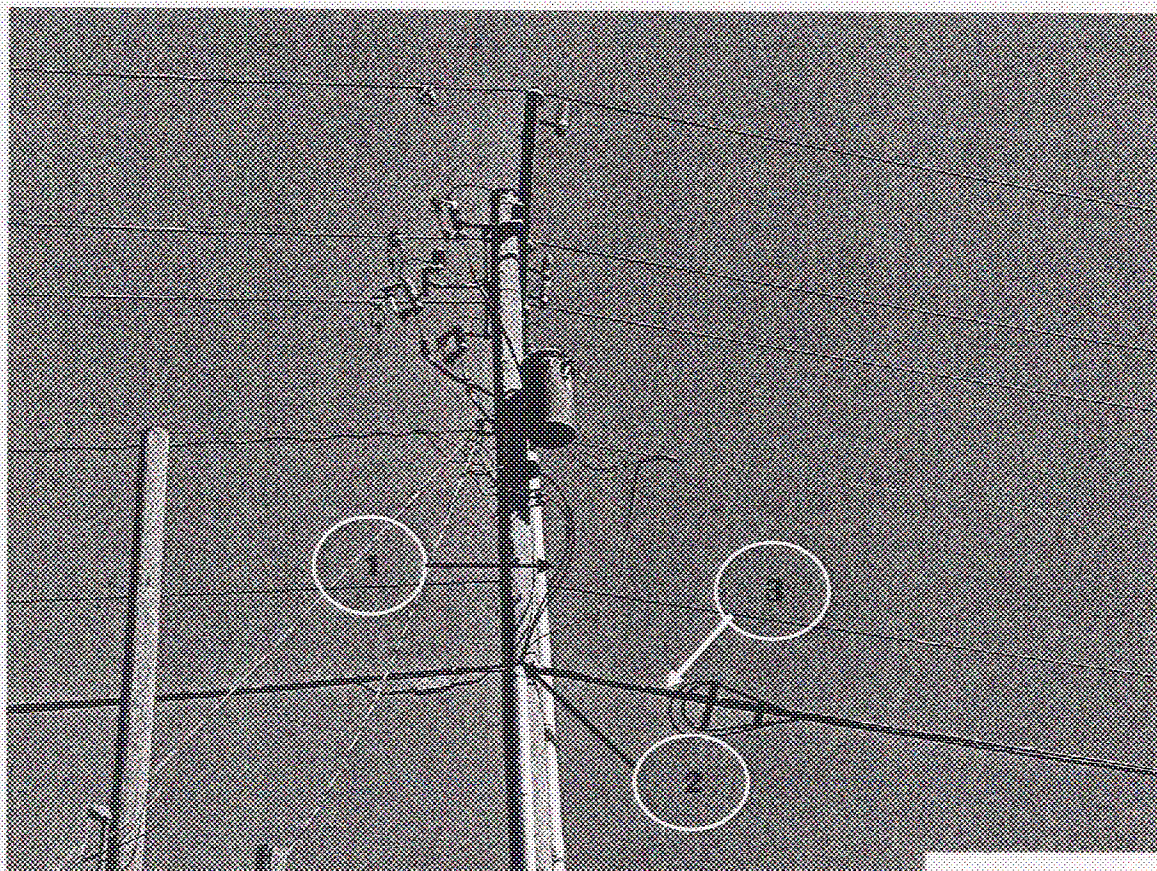
21. But cable operators do not usually own poles, so they must rely exclusively on the pole owners to facilitate the movement of plant if the other parties are unwilling to make the needed moves voluntarily. I am aware of situations where EAI has informed the cable operator that it (the cable operator) must get the telephone company to move its plant. The basic problem with this is that the telephone company and power companies have agreements with one another for the joint use of poles. But there is no



agreement or other relationship that would require telephone to move its facilities at the request of a cable operator—and they frequently decline to do so without such arrangement. In this case, telephone has not cooperated with either company in many cases.

22. Perhaps an even larger problem is that EAI – for whatever reasons – is not quick about relocating its facilities so that the indicated cable corrections can occur. It may be that the power company is reluctant to accept responsibility for its violations, that its crews are too busy or that they simply do not place a priority on completing this make-ready work. Whatever the case, the result is that EAI has been a major factor for what EAI attempts to blame cable as the unacceptably slow pace of correction. The two photos immediately below provide a vivid example of this.

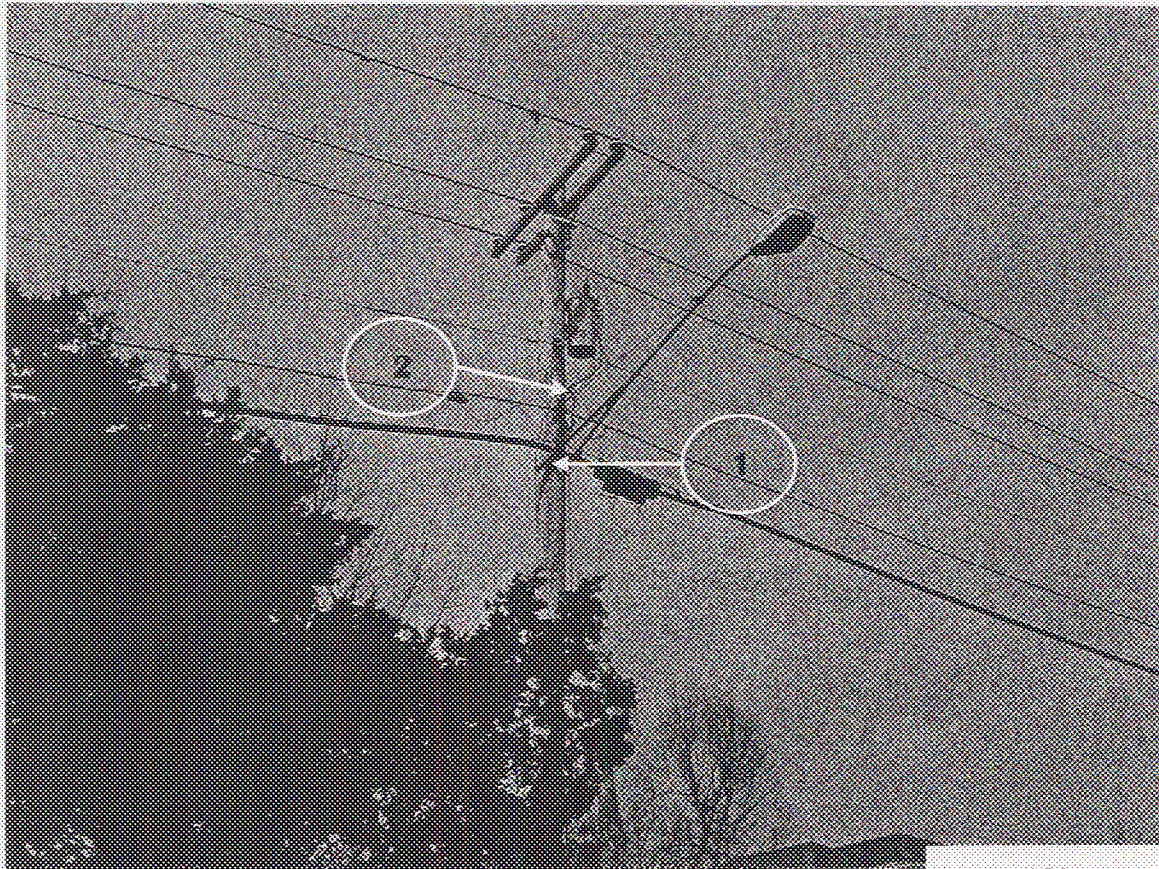




- 11A -

In this photo, which I took, EAI placed an underground service up the pole outside cable (Arrow #1). As a result, the cable operator cannot move or work on this cable without the assistance of power company crews. The Comcast cable is pinned to the pole by electric wires (Arrow #2) which, by code, should be 40" above the cable television line (the bottom black line with the fiber "snow shoe" (Arrow #3)). It is obvious from the position of these facilities that cable was installed first. Despite pleas from Comcast, EAI still has not corrected this clear hazard. Location: Little Rock University Ave.





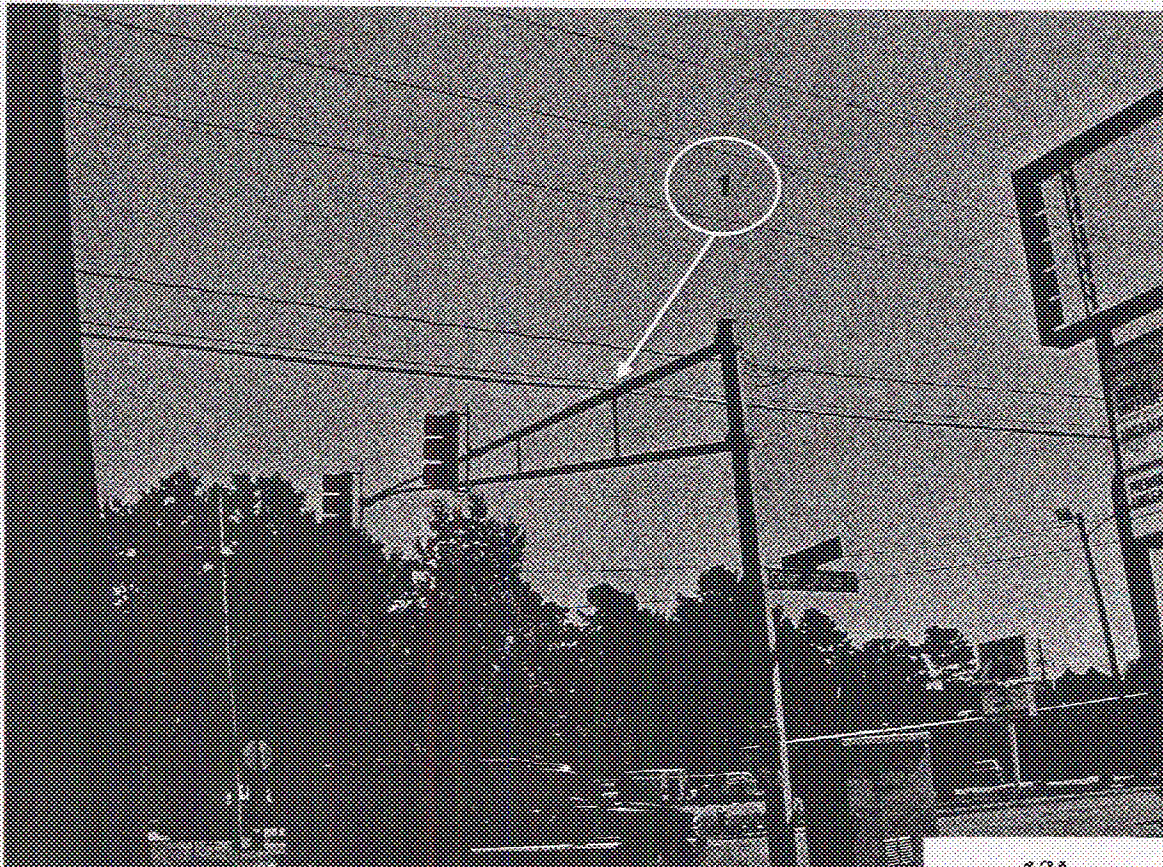
- 124 -

This photo, which I took, shows an EAI street-light bracket installed both below the telephone facilities (Arrow #1) and above the cable television facilities (Arrow #2). It is very obvious that this street light bracket could not have been installed before the cable television and telephone attachments because the street light brackets are installed *on top* of the communications facilities. This is one of what I would estimate to be many thousands of examples in Arkansas that contradict EAI's central assertion that electric facilities always came before cable. Location: Jacksonville, AR, N. First St.

23. Enlisting the cooperation of all parties on the pole is one of the most important issues in this dispute. My concerns with the way in which Entergy and USS designed and executed this inspection should not in any way be interpreted that I am opposed to safety inspections. If done correctly and fairly, they can be valuable to all attaching parties. Much of my work is in this area, and much of that work I do for power companies. The next three photos show that if Entergy had procedures for notice and cooperation in



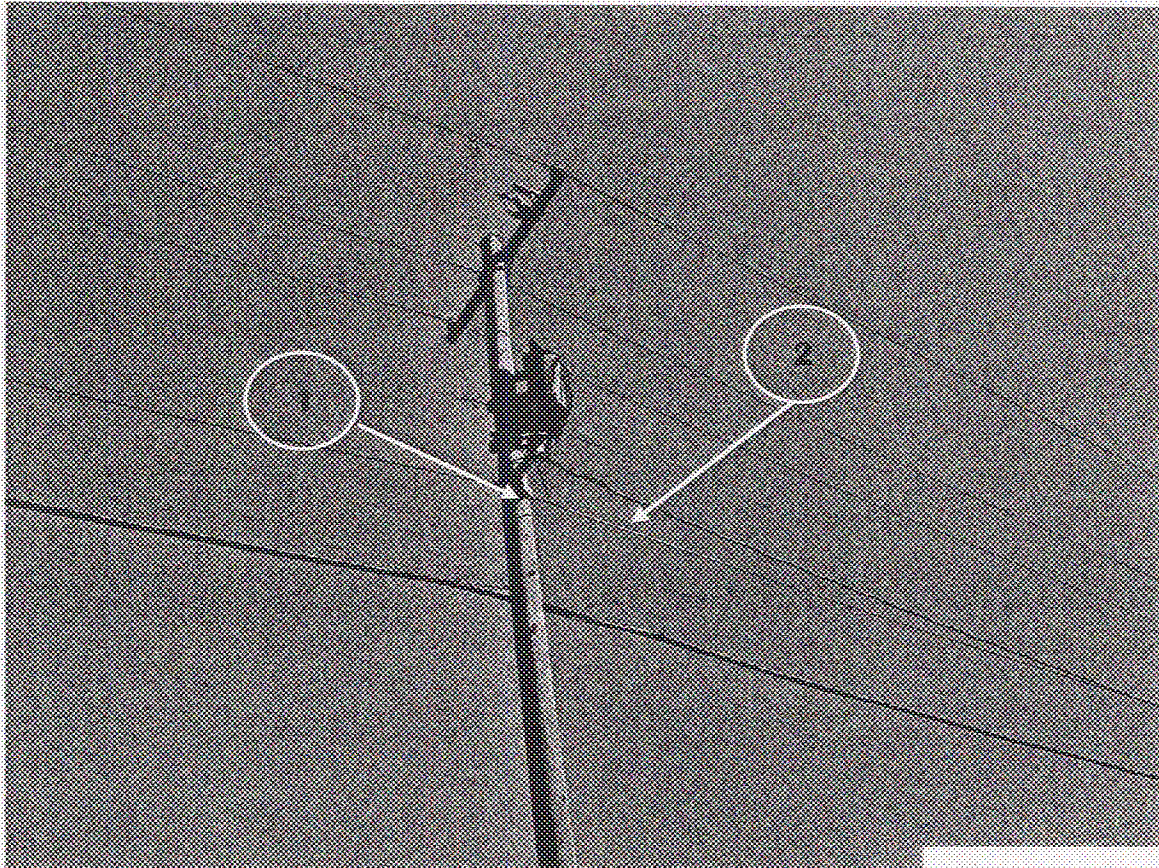
place, as opposed to merely blaming cable operators for serious situations that EAI and others create, could be avoided.



- 13A -

This photo, which I took, shows a common problem throughout Little Rock where new traffic signals are installed on long horizontal arms over the roadway by governmental agencies. In so doing they push the cable and/or telephone facilities up, often creating violations with cable tv, telephone and electric lines (Arrow #1). These types of problems need cooperation and good communications directed and facilitated by the power company. Location: Little Rock Geyer Springs Rd. at Forbing Rd.

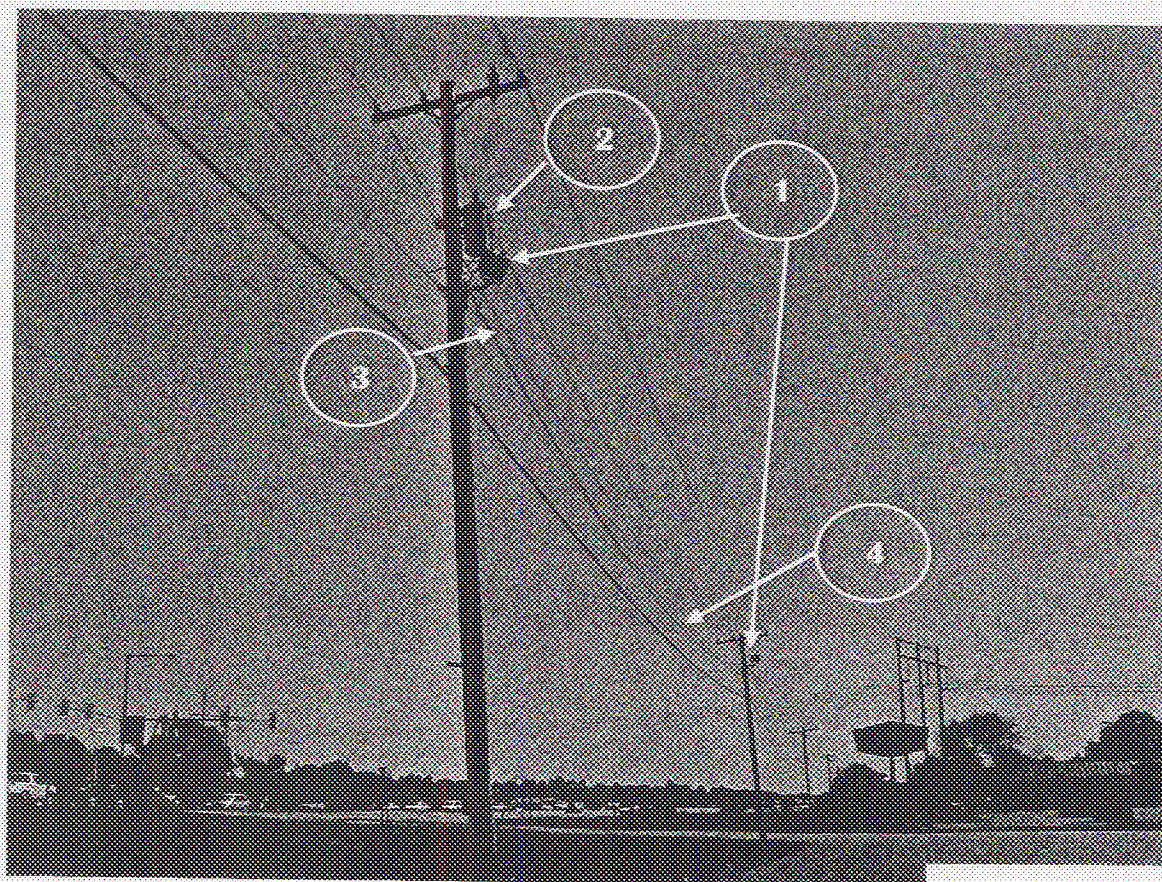




- 14A -

In this photo, which I took, EAI has installed a new flood light bracket (Arrow #1) below a fiber-optic cable (Arrow #2) now owned by a competitive telecommunications company as well as triplex secondary to the light on the next pole installed by EAI in violation. As is pointed out elsewhere Entergy installed this fiber optic cable (Arrow #2) in clear violation of the NESC at a time in which it was a part owner of the fiber venture that used to own this fiber strung throughout Little Rock (often in violation). Location: Little Rock University Ave.





- 15A -

In this photo, which I took, the new flood lights on both of the poles shown (Arrows 1) are the only things served by the transformer (Arrow #2). This indicates that all these facilities were placed long *after* cable was in place. (I address this issue in greater detail when considering ACTA's False premise Number 3) EAI's triplex wire (Arrow #3) from the transformer pole hangs *below* the fiber-optic (Arrow #4) in the span in violation. It should be 30" *above* this fiber-optic cable. A fiber optic cable may be installed in the electric supply space (if non-conducting) or in the communication space but not in between, which is the communications worker safety zone. These fiber-optic facilities used to be part-owned by Entergy. Location: Little Rock University Ave.

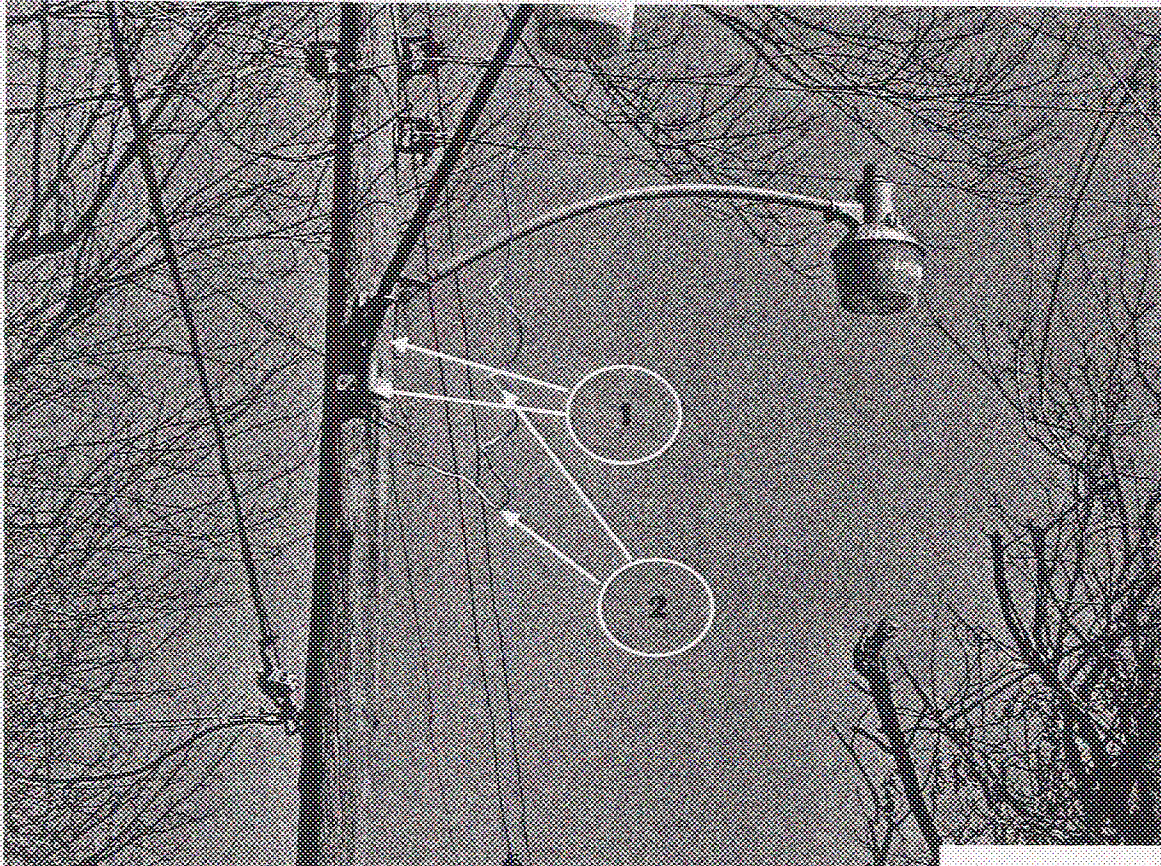
24. As I indicated, designing and implementing safety programs that include plant inspections and training of personnel working on and around electric lines accounts for a major part of my professional time. Doing this properly requires not simply that a survey or audit be designed well, that the people are well trained and the inspection is conducted thoroughly with the costs allocated fairly among the parties, but also that there is buy-in from



all involved *before* the inspection is undertaken. This buy-in is most readily facilitated with plenty of advance notice to the other parties (phone, cable, cities, transportation departments, etc.), and their active – even proactive – participation in the process.

25. Because I have worked for large and small power companies, I understand that sometimes it can be difficult to enlist the cooperation of all parties in a safety inspection. On the other hand, I believe that even in those difficult circumstances it is a mistake and unreasonable for a pole owner to approach pole tenants in a punitive fashion, as I believe Entergy has done here. It is much more productive to approach these problems in a cooperative fashion because the pole owner often creates more problems than do attaching parties, as these next two pictures illustrate.

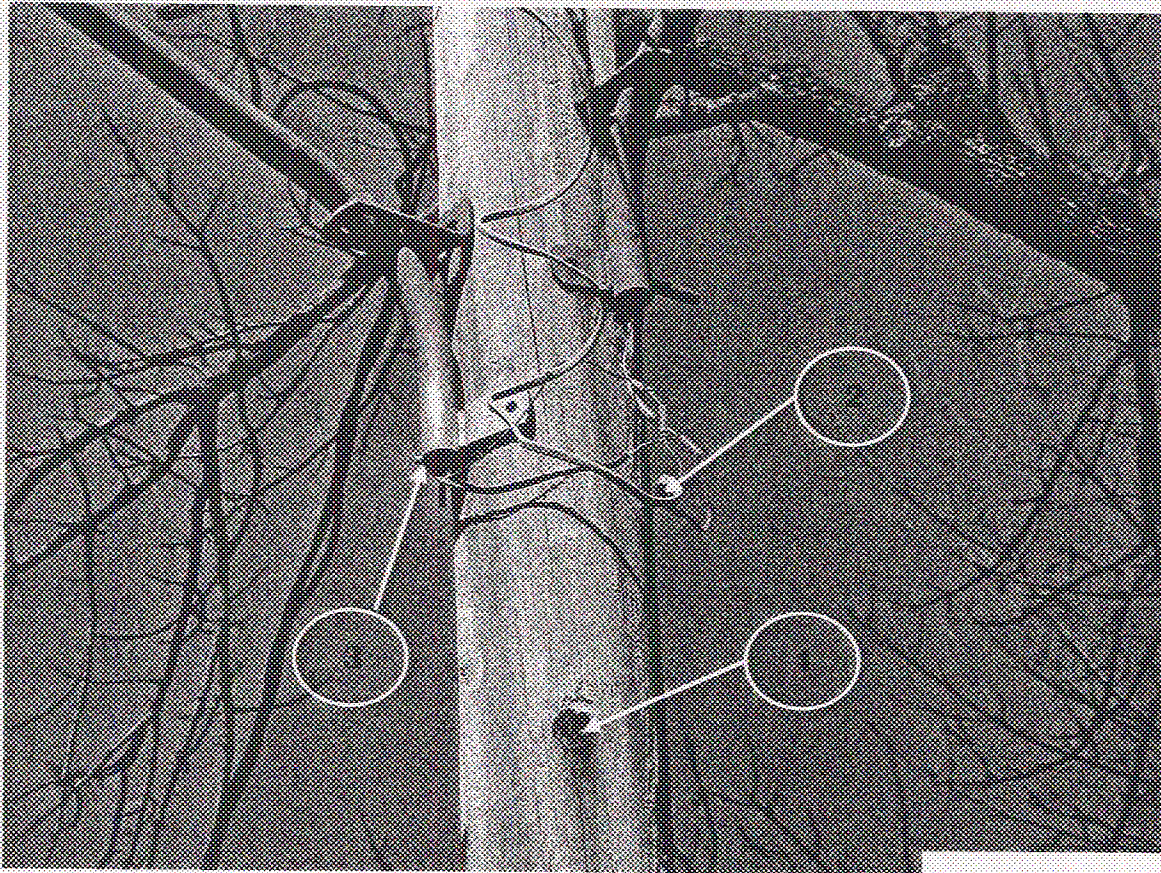




- 17A -

This photo, which I took, shows two street lights. The brackets are not grounded (Arrow #1). This violates EAI construction standards which are shown in the diagrams attached to some of its agreements. Even though EAI and USS purport to be concerned about plant safety, USS did not check for this EAI violation. Twenty inches of separation is required for un-grounded street light brackets. In addition, the "romex" type wire to power the lights hangs down beside the pole in violation (Arrow #2). Location: Little Rock 10<sup>th</sup> St rear of 928 Townsend St.





-- 18A --

This photo, which I took of the same two lights, shows the old bolt location (Arrow #1) where Comcast cable attachment previously was located less than 12" below the light leads (Arrow #2) and less than 20" below brackets not grounded (Arrow #3). Comcast visited this pole to resolve a guying problem which USS had notified Comcast to correct. USS had notified EAI to raise light leads to 12" above cable but nothing else. While correcting the guying, Comcast lowered its cable to obtain NESC compliance from the ungrounded brackets and low light leads which EAI had not yet raised. These violations still exist and must be corrected. Location: Little Rock 10<sup>th</sup> St rear of 928 Townsend St.

**False Premise No. 3: All of Power's Facilities Were Installed Before Cable's, So Cable Is Responsible For Almost All Spacing Violations On Entergy's Poles.**

26. Several EAI witnesses state that because cable operators historically have been the third attacher on poles (after the electric and telephone companies put in their facilities) those cable operators must have created most of the violations on the poles. This is not correct. EAI